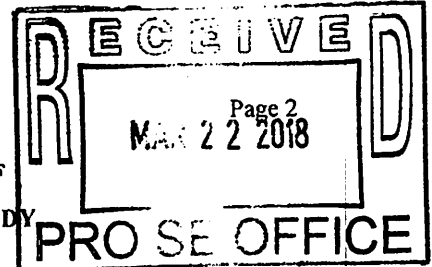


ORIGINAL

CV18-1877



PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
MATSUMOTO, J. HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District	Eastern
Name (under which you were convicted): Jeffrey Joseph		Docket or Case No.: 267/08	
Place of Confinement: Auburn Corr. Fac.		Prisoner No.: 09A2969	
Petitioner (include the name under which you were convicted) Jeffrey Joseph		Respondent (authorized person having custody of petitioner) Harold D. Graham	
The Attorney General of the State of NEW YORK Eric T. Schneiderman			

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Supreme Court: Criminal Term, County of Kings,
320 Jay Street, Brooklyn, New York, 11201
 (b) Criminal docket or case number (if you know): 267/08
- (a) Date of the judgment of conviction (if you know): June 29, 2010
 (b) Date of sentencing: August 19, 2010
- Length of sentence: 20 years (twenty) determinate
- In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
- Identify all crimes of which you were convicted and sentenced in this case:
Convicted of Manslaughter 1st Degree.
(C.P.L. § 125.20 (1))
- (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at either a pretrial hearing, trial or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Appellate Division: Second Department

(b) Docket or case number (if you know): A.D. No. 2010-08659

(c) Result: Affirmation of Conviction

(d) Date of result (if you know): December 21, 2016

(e) Citation to the case (if you know): People v. Joseph 145 A.D.3d 916

(f) Grounds raised: ① Suggestive Identification 3 Photo Array, Line Up.

② Denial of lesser included offense charge of Man. 2

③ Prosecutorial Misconduct: violation of Court's ruling

- Prose Supplemental Brief -

① Less than meaningful/insufficient jury readback of note

② Ineffective Assistance of Counsel / failure to request Siras hearing

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: Court of Appeals

(2) Docket or case number (if you know): N/A

(3) Result: Denied entry

(4) Date of result (if you know): March 27, 2017

(5) Citation to the case (if you know): N/A

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:

Yes ☐ No ☐

(2) Second petition:

Yes ☐ No ☐

(3) Third petition:

Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Identification? Suggestive Photo Array; Line Up.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): I was pointed out of a photo array where the photo used depicted me solely sporting a cornrows/braids type hairstyle, while every single other filler had a low hair cut close to the scalp. One of the prosecution's witnesses's prior description of assailant was that he had cornrows. No independent source hearing was granted. Line up also suggestive where I was the only one wearing jail-issued slip-on shoes with no laces.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: Court's refusal to charge second degree manslaughter as a lesser included offense.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): This denial of the requested lesser included offense of Man 2. deprived me of due process and a jury trial, where there was a reasonable view of evidence in light most favorable to the defense that the deceased - who was 7 inches taller than appellant, angry and intoxicated - had thrown a punch at appellant's face, missed him and stumbled, and appellant, while ducking, took out a gun for the first time and fired a single, fatal gunshot.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: Prosecutorial Misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

whether appellant was denied due process right to a fair trial, by the prosecution's persistent flouting of the Court's rulings (3 times) precluding testimony that appellant allegedly was affiliated with the CRIPS gang and improper insinuation to the jury that courtroom spectators were CRIPS who were trying to intimidate prosecution witnesses.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR:

Less than meaningful / Insufficient Jury
Note Readback.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Trial Court
not only failed to push for further clarification & refinement when
responding to an ambiguous note from the jury, but it opted to
read back the most prejudicial interpretation there was, even
after disagreements & adverse opinions on both sides. Trial Court
also only read back "direct examination" testimony favorable to the
prosecution but excluded "cross-examination" testimony favorable
to the appellant on the same issue.

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Alan I. Stutman, ESQ., 18-B, 50 Court Street, Suite #501, Brooklyn NY 11201

(b) At arraignment and plea: Alan I. Stutman, ESQ., 18-B, 50 Court Street, Suite #501, Brooklyn NY 11201

(c) At trial: Alan I. Stutman, ESQ., 18-B, 50 Court Street, Suite #501, Brooklyn, NY, 11201

(d) At sentencing: Alan I. Stutman, ESQ., 18-B, 50 Court Street, Suite #501, Brooklyn, NY, 11201

(e) On appeal: Ms Amy Donner, ESQ., The Legal Aid Society, 199 Water Street, New York NY 10038

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

[The response area for question 18 is crossed out with a large diagonal line.]

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Reversal,
Annulment and Dismissal of Conviction

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on March 16, 2018

(month, date, year).

Executed (signed) on March 16, 2018 (date).


Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

Clerk's Office (ProSe)
United States District Court, E.D.N.Y.
225 Cadman Plaza
Brooklyn NY 11201

March 16, 2018

2018 MAR 22 AM 3:41

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

FILED
CLERK

MB

RE: Request for Extension.


To: Clerk of Court,

This is Jeffrey Joseph #09AZ969. Please find enclosed the original and two copies of my initial papers: Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus.

I respectfully request for the Court to grant me an extension in order to file a Memorandum of Law to support my arguments and the facts of my case. Last month I completed a year in Special Housing/Solitary confinement and been housed in three different facilities within the past year. Numerous legal paperwork and property came up missing upon these facility transfers.

Prior attorney, appellate counsel, Ms. Amy Donner, ESQ., The Legal Aid Society is aware of such hardships, as requests for arrangements have been made to replace the lost documents. Please note that the Court of Appeals denied me entry on March 27, 2017, thus, application is timely. Please assist me with this extension request so I can adequately litigate my case. Thank you.

Respectfully Submitted,


J. Joseph #09AZ969

cc: Files
Amy Donner, ESQ.

03/16/18

Clerks office (ProSe)
United States District Court, E.D.N.Y.
225 Cadman Plaza
Brooklyn NY 11201

March 16, 2018

RE: Ground 5 (Ineffective Assistance of Counsel).

GROUND 5: Ineffective Assistance of Counsel.

(A) Supporting Facts: Trial counsel failed to request for a "Sirois" hearing when the People's witness changed his testimony and the People attributed this change in testimony to the defendant's misconduct; the People then was allowed to read into the record as evidence, in the presence of the jury, the witness's prior un-contested, un-challenged, out-of-court statement absent an evidentiary hearing (Sirois) to ascertain what, if any, clear & convincing evidence that the appellant forfeited his Sixth Amendment rights to confrontation due to his own misconduct.

(B) This issue has been fully exhausted via State remedies.

(C) Direct Appeal of Ground 5: This issue was raised upon appeal from the judgment of conviction. No post-conviction proceedings.

Respectfully Submitted,


J. Joseph #19AZ969

CC: Rites

UU 3/16/18